

401 & CZM



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Overview of CZM

- Applicants for federal permit/license are required to certify that the activity will comply with the state's CZM program in all parts of the 15 coastal counties.
- State reviews proposed federal actions or projects to determine if they comply with state Coastal Zone Management Program.
- Federal Agency can not issue a permit or license until CZM has been issued

Coastal Zone Management Act

- Ecology's Coastal Zone Management Program (CZMP) consists of six enforceable policies:
 1. Shoreline Management Act (SMA)
 2. Clean Water Act (CWA)
 3. Clean Air Act (CAA)
 4. State Environmental Policy Act (SEPA)
 5. Energy Facility Site Evaluation Council Law (EFSEC)
 6. Ocean Resources Management Act (ORMA)



What is Needed for CZM

- Non Federal Projects – CZM Statement form
- Federal Projects – CZM statement indicating whether the activity will be undertaken in a manner consistent with the enforceable policies to the maximum extent practicable.
- 21 day Public Comment Period

**CERTIFICATION OF CONSISTENCY WITH
THE WASHINGTON STATE COASTAL ZONE MANAGEMENT PROGRAM
FOR FEDERALLY LICENSED OR PERMITTED ACTIVITIES**

Federal Application Number: _____

Applicant: _____

Project Description:

(attach site plans, location (county/city), and proximity to waterbody (name))

This action under CZMA§307(c)(3) is for a project that will take place within Washington's coastal zone or which will affect a land use, water use, or natural resource of the coastal zone. *(The coastal zone includes all parts of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties.)*

The project complies with the following enforceable policies of the Coastal Zone Management Program:

1. Shoreline Management Act (SMA):

Is outside of SMA jurisdiction ()
Applied for shoreline permit ()# _____ being reviewed by _____
Has a valid shoreline permit ()# _____ issued
by _____ on _____
Has received an SMA Exemption ()# _____ issued
by _____ on _____

2. State Water Quality Requirements:

Does not require water quality permits ()
Applied for water quality certification ()
Has received water quality certification ()# _____ issued on _____
Applied for stormwater permit ()# _____ issued on _____
Has received stormwater permit ()# _____ issued on _____

3. State Air Quality Requirements:

Does not require air quality permits ()
Applied for Air Quality permit ()# _____ being reviewed by _____
Has an Air Quality permit ()# _____ issued by _____
on _____

CZM Timeline

- Federal Projects – 60 days
- Non Federal Projects - 6 months to make determination
 - Object
 - Concur
 - Concur with condition

Overview of 401

- Applicants for federal permit/license to conduct any activity that may result in a discharge into waters of the state must receive a Section 401 Water Quality Certification from Ecology.
- Ecology reviews the proposed projects to determine if the project will comply with the states Water Quality Standards.
- Federal Agency can not issue a permit or license until a 401 has been issued.

Who Writes 401's?

- Ecology writes most of the 401's in Washington except:
- EPA writes Water Quality Certifications only in areas with exclusive Federal jurisdiction. These include:
 - 1) Land within the boundaries of a National park:

Rainier, North Cascades and Olympic National Parks

Note: that associated areas, such as the North Cascades Recreational area, are not exclusive federal jurisdiction, and so fall within Ecology's authority.
 - 2) Fort Lewis
 - 3) Land within the boundaries of an Indian Reservation
 - *This includes the non-tribally owned land within the reservation boundaries.
 - *If the Tribe has its own water quality standards -and EPA has approved them- then the Tribe will write the certification.
 - *In practical terms this means EPA will do certifications for all Tribes except Chehalis and Puyallup.
 - *The Colvilles have developed their own WQS, but they have not yet been approved by EPA. Once they are approved, then the Colvilles will do their own as well.

Individual 401 Process

- Receive request for 401 (JARPA)
- Acknowledgement letter
- Public Notice with comment period
- Review documents to determine if we have “Reasonable Assurance” that the WQ standards will be met (including beneficial uses).
- Issue decision as a 90.48 Order
- 30 day appeal period

JARPA

- Joint Aquatic Resource Permit Application (401 Request)
- Is the official 401 application for everyone (including FERC and Corps projects)
- Receipt of a JARPA constitute a 401 request, starting the one year clock

Public Notice

- Public Notices must be mail out for all 401s – at least a 20-day comment period.
 - Joint Corps and Ecology for individual 404
 - If NWP PN starts another 180 days clock
- Notice maybe published in the paper
 - Must be published twice, once each on the same day of the week in two consecutive weeks, you start the 20 day clock after the second publication

Public Meetings

- If sufficient public interest may hold a public hearing
- Notice must be published twice, once each on the same day of the week in two consecutive weeks. The meeting cannot occur until after the second publication

Chapter 173-225 WAC

What do we do with comments

- Ecology does not have to provide any type of written response to comment received.
- Comments are considered when making our decision
- A copy of the decision is sent to all the parties that commented.

Appeals

- 401 are appealed to the PCHB
- Have to be appealed within 30 days

Nationwide Permits NWP's

Projects with minimal impacts to waters

44 different NWP's, each authorizing a specific type of activity.

Includes either Section 10 or Section 404-authorized activities.

401 Decisions on NWPs

- Approved = no action by Ecology
- Partially Denied without prejudice =
conditioned by Ecology, must meet Ecology
401 conditions or it triggers an individual 401
permit
- Denied = need individual 401 permit
 - DOES NOT mean the NWP denied, only the
Ecology 401 Certification

NWP Process & Timeline

- Corps issue one of two letters
 - No Further Action Need
 - Need to contact Ecology
- Ones that need Ecology action we have 180 days or NWP is considered waived.

Two Types Ecology Action on NWP

Individual 401 based on state conditions

OR

Letter of Verification (LOV)

Decision Sequencing

- SEPA prior to 401 (401 alone is exempt)
- 401 Prior to CZM
- Shoreline Permit prior to CZM
- 401 & CZM prior to Federal permit/license
 - Note: Typical practice is to issue 401 and CZM at the same time.